

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:

Review of the Emergency Alert System

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EB Docket No. 04-296

COMMENTS



I. Introduction and Summary

In these Comments, ACA responds to several small cable system issues raised in the NPRM.¹ These Comments show that:

- EAS waivers have enabled many small systems to come into compliance.
- EAS waivers have enabled many very small systems to avoid choosing between noncompliance or shutting down.
- The cost of EAS equipment will remain out of reach for very small cable systems for the foreseeable future.
- Continued relief is necessary for very small systems.

Consequently, we ask the Commission to act expeditiously to provide relief for very small systems. Virtually all EAS waivers expire in October 2005. An expedited decision on small system relief will avoid a looming compliance crisis and ease the uncertainty and risk that many small cable companies face, knowing that their very

¹ *In the Matter of Review of the Emergency Alert System, Notice of Proposed Rulemaking*, FCC 04-289, EB Docket No. 04-296 ("NPRM").

small systems will not support the cost of EAS equipment next year. The Commission's EAS waiver dockets provide a detailed record of the financial hardship that current EAS equipment costs impose on hundreds of very small systems. That record supports broader relief in place of the current *ad hoc* waiver process.

Without expedited adjustments to the EAS regulations, the Commission will face the following paradox: All very small systems currently deliver EAS messages aired on broadcast channels and certain satellite channels. The costs of installing EAS equipment will force many very small systems to shut down. As a result, rural consumers who currently receive some EAS messages via cable will then receive no EAS messages via cable. Neither the public interest nor the statutory goals of Section 624 will be served by this result.

ACA supports the Commission's efforts to study alternatives to the current EAS system. We recognize that alternatives may require action by Congress or other agencies. A study of those alternatives should not delay expedited relief from Section 11.11 for very small systems.

ACA proposes the following three adjustments to the EAS regulations:

- **Small system relief.** Small systems serving more than 1,000 subscribers that are currently subject to an EAS waiver would have until October 1, 2007, to comply with Section 11.11. During that period, these systems would be obligated to pass through EAS messages contained in broadcast and satellite channels carried on the systems. This change will provide more time for a small group of financially distressed systems to comply with the regulations.
- **Very small system relief.** Systems serving 1,000 or fewer subscribers would be obligated to pass through EAS messages contained in broadcast and satellite channels carried on the systems. This will ensure that subscribers receive available EAS messages inserted at the programming source. This will also provide ample time for the Commission, Congress, and other agencies to evaluate changes to the current EAS system.

- **Customer notice.** Small cable operators without EAS equipment would provide subscribers with a simple written notice listing the programming services that carry EAS messages. A notice would increase consumer awareness of where they can find EAS messages on very small cable systems. This notice would be based on a list disseminated by the Enforcement Bureau of satellite channels that have provided notice of voluntary participation under 47 CFR § 11.43.

Section V of these Comments proposes specific subsections for 47 CFR § 11.11 that will make these changes.

II. The cost of EAS equipment will still impose an impossible financial hardship on many very small cable systems.

The Commission now has a detailed record showing that very small cable systems cannot support the cost of EAS equipment. For systems serving 1,000 or fewer subscribers, the Commission has concluded in more than 250 cases that EAS equipment costs would impose a financial hardship. These decisions cover more than 1,800 systems.

Each of those individual cases tells the same story – very small cable systems face extremely challenging market conditions. Squeezed between rising programming costs and vigorous DBS competition, these systems do not generate sufficient income to fund EAS equipment.

The cost of EAS equipment has not decreased over time. Based on information from the Hardware Division of the National Cable Television Cooperative,² equipment and accessory costs range from \$6,500 to more than \$10,000 per headend, depending on system configuration and monitoring software and hardware. ACA members report that installation costs can add an additional \$750 to \$1,500 per headend.

² The National Cable Television Cooperative (“NCTC”) is a buying group serving the small cable sector. EAS equipment purchased through NCTC is probably the lowest cost source of EAS equipment for most small cable operators.

Between now and October 2005, we can discern no basis to conclude that these circumstances will change. EAS equipment costs will not likely decrease.

Programming costs will continue to rise. DBS will continue to compete effectively for rural customers. For very small systems, the number of basic subscribers will remain static or shrink. The Commission can readily conclude that very small cable systems warrant continued relief.

III. The effects of EAS waivers – more time to comply, more time to survive.

To help answer the Commission's questions concerning the effect of EAS waivers,³ ACA posed the following question to its members: **"How have EAS waivers helped your company?"** We received more than 100 responses. The responses fall into two categories: (i) small systems where EAS waivers allowed additional time to comply; and (ii) very small systems where EAS waivers allowed the systems to survive.

More time to comply. Many EAS waivers gave companies time to develop strategies that mitigated the financial hardship of compliance. ACA members report a variety of means to accomplish compliance at a lower cost. These include headend consolidation, system sales, and spreading costs over a longer period. Generally, this group of respondents operates "larger" small systems, those serving more than 1,000 subscribers. A sample of representative responses follows.

³ NPRM at ¶ 45.

How have EAS waivers helped your company?

“It helped justify the cost and gave us time to tie headends together and collapse a smaller non-EAS compliant head-end into a compliant headend.”

“The extension . . . allowed us time to market and sell a couple of our stand-alone smaller systems to other companies who could then tie the systems into their neighboring systems and provide EAS more efficiently.”

“It has allowed us time to designate funds toward this project. We have purchased one EAS system to date, and are testing it in our largest system.”

“The waivers helped us phase in the EAS purchases/installations. We are a very small cable company operating in small rural communities. The federal mandates are very difficult to comply with, as they are costly with no cost recovery.”

“For our medium size systems (under 5,000 but over 1,000) the additional time granted by the 1 & 2 year waivers allowed us time to budget for the implementation of EAS and implement the systems.”

“By allowing us to spread the deployment cost over a couple of years.”

“Has allowed us time to consolidate 7 headends into 1.”

These responses describe EAS waivers that accomplished one key objective – giving companies more time to comply in a cost effective manner, thus alleviating the financial hardship of the October 2002 deadline.

Other respondents, owners of very small systems, describe a more difficult problem.

More time to survive. For many very small systems, EAS waivers have meant survival. Most stand-alone systems serving 1,000 customers or fewer could not support the cost of EAS equipment in October 2002. The waivers provided a 36-month reprieve from that impossible financial burden. ACA estimates that approximately 1,800 cable systems fall within this group. The following ACA member responses tell their story.

How have EAS waivers helped your company?

"It helped us tremendously the past three years. Unfortunately, our financial situation has worsened with the technology competition. We have lost many customers. Our system is definitely struggling to survive."

"The EAS waivers have kept us from having financial expenditures that would threaten the future of the company."

"They have helped us continue operating and comply with the FCC."

"It has allowed us to continue to operate."

"It has helped keep us in business."

"It has allowed us to continue to offer cable service to these communities."

"We have been able to stay solvent because we did not have this expense."

"Allowed us to stay in business and continue to provide service to rural America."

"Less costs. I would probably shut it down if I was forced."

"We are still in business."

These responses show that for very small systems, EAS waivers deferred a compliance crisis for 36 months. Absent waivers, these systems would have little choice but to shut down.

It is important to note that even with a waiver, each very small system delivers some EAS messages. Each system cablecasts the EAS messages contained in broadcast programming and in satellite channels that voluntarily air EAS messages. If very small systems cease operations, rural customers would lose this important source of EAS messages.

Virtually all very small system waivers will expire in October 2005. The next section discusses the consequences of that deadline.

IV. An October 2005 compliance deadline will impose a severe financial hardship on very small systems.

Between the EAS waiver dockets and these Comments, the Commission has ample information to conclude that very small systems cannot comply with the current EAS system. More than 250 Orders granted waivers for over 1,800 very small systems. Each of those Orders followed a straightforward financial calculus – given the cost of EAS equipment and the financial performance of very small systems in then current market conditions, compliance would impose a financial hardship.

At this point, none of the variables in the financial hardship calculus has changed for the better. Equipment costs have not come down. Programming costs continue to increase. DBS competition continues to take subscribers and to constrain the ability to raise rates. From this, the Commission can readily conclude that the financial circumstances of very small systems have not improved since October 2002, and will not improve in the foreseeable future, certainly not by October 2005.

To obtain ACA member input on the October 2005 deadline, we asked the following question:

If you do not think you will be able to bring all of your headends into compliance by October 2005, what are the reasons?

Here are representative responses:

“The costs of the EAS equipment would impose a substantial financial hardship.”

“Economics. The remaining 5 systems are all less than 100 subs.”

“It would still be a financial hardship on a system with only 260 subs.”

“We do not have the money.”

“Trying to upgrade system to compete with DirecTV and Dish Network – losing customers.”

"Decreases in subscriber counts due to increased satellite penetration."

"Large programming fee increases annually."

"We are really low on funds. We are struggling to keep our system going. We will try to comply but don't know where the funding will come from."

"These systems are so small that it is cost prohibitive. It would be more likely that we would just shut them down."

"Rising programming costs continue to diminish our bottom line."

"Compliance is just too big of a burden on our small company. We have negative growth now."

"Most of the headends are under 500 subscribers. I will [need to] turn them off."

"Simple economics. Our financial position has not improved since the original grants of the waivers and we have not seen a dramatic reduction in the cost of purchasing and implementing the systems."

"It is financially impossible to purchase the equipment."

The above remarks illustrate that absent broad relief from the October 2005 deadline, a compliance crisis looms for very small systems.

V. The Commission should provide small system relief pending review of EAS alternatives.

The EAS waiver dockets and these Comments provide the Commission with a solid foundation to provide additional relief to small cable systems. Virtually all existing EAS waivers will expire in October 2005. For very small systems, the need for expedited relief in the near term is critical.

The circumstances of small systems and very small systems warrant two changes to the EAS regulations, one for systems serving more than 1,000 subscribers and one for systems serving 1,000 or fewer subscribers. We also propose a notice requirement.

Relief for systems serving greater than 1,000 subscribers. For small systems serving greater than 1,000 subscribers and that are currently subject to waivers, we propose a new subsection (f) to 47 CFR § 11.11:

- (f) Any cable system serving greater than 1,000 subscribers that was subject to a Commission-granted EAS waiver as of September 1, 2004 shall comply with subsection (a) no later than October 1, 2007. Any cable system subject to this subsection shall pass through all EAS messages contained in broadcast or satellite channels cablecast on such system.

This change will provide relief in two respects. First, it will give small systems additional time to comply with Section 11.11. Second, if the Commission makes significant adjustments to the EAS system, it will prevent this group of systems from purchasing and installing costly equipment that may become obsolete under new regulations. At the same time, this change will establish the obligation of cable operators subject to this section to deliver EAS messages inserted by broadcasters and satellite programmers. Under our proposed changes, any system subject to this relief would also notify subscribers and franchise authorities of the availability of EAS messages as described below.

Relief for very small systems. For systems serving 1,000 subscribers or less, we propose a new subsection (g) to 47 CFR §11.11:

- (g) Any cable system serving 1,000 or fewer subscribers shall comply with subsection (a) by passing through all EAS messages contained in broadcast or satellite channels cablecast on such system.

This change will provide relief in at least four respects. First, it will avert the compliance crisis and system shutdowns that would likely occur in October 2005 as existing waivers expire. Second, it will provide certainty and direction for very small

systems so that they can budget very limited resources. Third, it will provide the Commission with ample time to study EAS alternatives for rural consumers served by very small systems. Fourth, it will ease the administrative burdens and costs on the Commission of processing a large round of individual requests for waiver extensions.

At the same time, this change will establish the obligation to deliver EAS messages inserted by broadcasters and satellite programmers. Under our proposed changes, any system subject to this relief would also provide an EAS availability notice to subscribers and franchise authorities as described below.

EAS notice requirement. To alleviate concerns about consumer and local franchise authority awareness of EAS availability, we propose the following subsection (h) to 47 CFR § 11.11:

- (h) Cable operators with systems subject to subsection (f) or (g) shall provide notice to subscribers and local franchise authorities at least annually of the programming services providing EAS messages as reported to the Commission under 47 CFR § 11.43. The operator may provide such notice using any reasonable written means at its sole discretion.

The Enforcement Bureau can facilitate this notice requirement by publishing on its website a list of satellite delivered channels that have provided notice of voluntary participation under 47 CFR § 11.43.⁴

⁴ Formerly, 47 CFR § 11.43 contained a list of satellite channels that had provided notice of voluntary participation. This list was removed without comment in *In the Matter of Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, Report and Order*, EB Docket No. 01-66, 17 FCC Rcd. 4055 (2002).

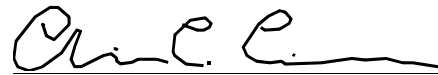
VI. Conclusion

The Enforcement Bureau and the Department of Homeland Security have done an excellent job in providing case-by-case EAS relief for very small systems. The Commission now has ample data to replace the current *ad hoc* process with broader relief for very small systems. By adopting the amendments to Section 11.11 proposed here, the Commission will avert a looming compliance crisis.

These changes will provide essential interim relief pending study of alternatives to the current EAS system.

Respectfully submitted,

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